

Message Text

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ACTION OPIC-06

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FM AMEMBASSY LA PAZ

TO SECSTATE WASHDC IMMEDIATE 1768

INFO AMEMBASSY LIMA

AMEMBASSY SANTIAGO

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E.O. 11652: N/A

TAGS: EINV, BL

SUBJECT: OPIC: ARTICLE 51 AND OPIC OPERATIONS IN BOLIVIA

1. IN FURTHER DISCUSSIONS WITH GOB INTEGRATION OFFICIALS FOLLOWING MANSBACH'S VISITS HERE THEY HAVE RAISED THE QUESTION OF PRECISELY WHAT WOULD BE NECESSARY AS CHANGES IN ANDEAN MARKET REGULATIONS TO PERMIT OPIC INSURANCE OF DIRECT US EQUITY INVESTMENTS IN BOLIVIA FOR EXPORT TO THE ANDEAN MARKET. MANSBACH HAD EXPLAINED THAT THE PROBLEM WAS WITH ARTICLE 51'S PROHIBITION OF RESORT TO INTERNATIONAL TRIBUNALS FOR RESOLUTION OF INVESTMENT DISPUTES AND ITS PROHIBITION OF SUBROGATION OF RIGHTS TO THIRD-PARTY "STATES." THE GOB OFFICIALS ADVISED MANSBACH THAT THEY HAD ALREADY DECIDED TO SEEK AN EXCEPTION TO ARTICLE 51 TO PERMIT BOLIVIA AND ECUADOR (IF THE LATTER COUNTRY SO DESIRED) TO TAKE INVESTMENT DISPUTES TO INTERNATIONAL TRIBUNALS TO WHICH THEY (BOLIVIA OR ECUADOR) ARE MEMBERS. MANSBACH INDICATED THAT SUCH A CHANGE WOULD NOT BE SUFFICIENT, BUT RATHER, THAT A SPECIFIC CHANGE IN THE SUBROGATION OF RIGHTS PROHIBITION ALSO WOULD BE NECESSARY. AFTER CONSIDERING MATTER SOME GOB OFFICIALS BELIEVE THE POSSIBILITIES ARE VERY SLIM OF GETTING OTHER ANDEAN PACT GOVERNMENTS TO AGREE TO EXPLICITLY AUTHORIZE BOLIVIA TO PERMIT

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SUBROGATION OF RIGHTS TO THIRD-PARTY "STATES". THEY

ARE THEREFORE CONSIDERING SEVERAL POSSIBLE SOLUTIONS. ONE WOULD BE TO SEEK AN ESCAPE PROVISION WHICH WOULD STATE THAT UNDER SPECIAL CIRCUMSTANCES BOLIVIA AND ECUADOR COULD APPLY DIFFERENT STANDARDS THAN THOSE CONTAINED IN ARTICLE 51. ACCORDING TO THE GOB THERE ARE SIMILAR ESCAPE CLAUSES ELSEWHERE IN THE PACT ARTICLES. ANOTHER POSSIBLE SOLUTION WOULD BE A SPECIFIC CHANGE IN ARTICLE 51 WHICH WOULD ALLOW SUBROGATION OF RIGHTS TO FOREIGN GOVERNMENT INVESTMENT INSURANCE COMPANIES. ONE GOB OFFICIAL SAID HE HAD BEEN TOLD BY A CHILEAN GOVERNMENT OFFICIAL THAT OPIC IS NOW INSURING US EQUITY INVESTMENT IN CHILE DESPITE CHILE'S FORMAL ADHERENCE TO THE ANDEAN PACT AND DECISION 24.

2. ACTION REQUESTED: GOB PLANS TO DISCUSS ITS POSITION FOR UPCOMING PACT MEETINGS ON JULY 30 AND DELEGATION WILL DEPART FOR LIMA AUGUST 1 OR 2. EMBASSY WOULD APPRECIATE WASHINGTON ADVICE ASAP ON WHETHER POSSIBLE SOLUTIONS MENTIONED ABOVE WOULD SERVE OPIC'S NEEDS. WE WOULD ALSO LIKE TO BE ADVISED AS TO WHETHER OPIC IS AUTHORIZING EQUITY INVESTMENT INSURANCE IN CHILE AND, IF SO, ON WHAT LEGAL BASIS.

3. WE WOULD LIKE TO MAKE CLEAR THAT WE ARE NOT PRESSING THE GOB TO SEEK CHANGES IN DECISION 24 OR ANYWHERE ELSE IN ITS INTEGRATION POLICIES. GOB OFFICIALS HAVE CONSISTENTLY STATED THEIR INTEREST IN OPIC OPERATIONS HERE AND OUR ROLE HAS BEEN TO MAKE INFORMATION AVAILABLE TO THEM ON WHAT WOULD MEET OPIC'S REQUIREMENTS.
STEDMAN

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